



# STATE OF ARKANSAS

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Opinion No. 94-090

June 2, 1994

Ms. Cathyrn E. Hinshaw  
Executive Director  
Arkansas Fire & Police Pension Review Board  
P.O. Drawer 34164  
Little Rock, Arkansas 72203

Dear Ms. Hinshaw:

This is in response to your request for an opinion on whether the 1.25% benefit to firefighters covered by local fire pension and relief funds, as found in A.C.A. § 24-11-826, applies to part-paid firefighters, as well as full-paid firefighters.

It is my opinion, although the issue is not entirely clear, that the answer to your question is "yes."

The statute in question provides as follows:

(a) Beginning July 1, 1987, in addition to the monthly pension benefits as set forth in §§ 24-11-801 to -807, 24-11-809, 24-11-810, 24-11-812 to -815, 24-11-818, 24-11-820, and 24-11-821, for those fire fighters hired prior to January 1, 1983, and who continue to work beyond their twenty-fifth year, the member shall receive at age sixty (60) years and thereafter a benefit on the amount equal to one and one-fourth percent (1.25 %) of final salary attached to the rank which he may have held in the department preceding the date of retirement multiplied by the number of years of service in excess of twenty-five (25) years, up to a maximum

total benefit of seventy-five percent (75%) of final salary, provided that the maximum seventy-five percent (75%) of final salary shall no longer apply to benefits payable on April 30, 1991, and thereafter to persons retiring henceforth and to those persons who retired on or after July 1, 1987. However, in no case shall the benefit payment exceed one hundred percent (100%) of final salary.

(b) This benefit shall be payable to the member only and not to surviving spouses or dependent children.

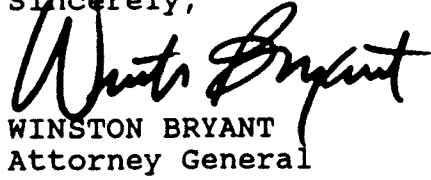
(c) For the purposes of this section, 'salary' means recurring pays which are received for a regularly scheduled work week and shall not include payments for unused accrued sick leave or annual leave, or the cash value of any nonrecurring or unusual remunerations.

The statute above does not indicate whether its provisions are applicable to part-paid firefighters. It refers only to "members" and "fire fighters." The statute states, however, that its benefits are "in addition" to the benefits set forth in A.C.A. § 24-11-818. That statute is the general one which grants half-salary pensions to firefighters. The provisions of this general statute expressly apply to part-paid firefighters, and have so applied from the statute's original adoption. See Act 491 of 1921, Section 4. It can thus be concluded that the benefits granted by A.C.A. § 24-11-826, because they are "in addition" to those granted in § 24-11-818, also apply to part-paid firefighters. See also Op. Att'y Gen. 91-216 at n.2 (copy enclosed) (presuming A.C.A. § 24-11-826 applicable to volunteer firefighters who receive a regular salary). This conclusion is buttressed by the fact that pension acts should be liberally construed in favor of those to be benefited. See Scott v. Greer, 229 Ark. 1043, 320 S.W.2d 262 (1959), and Looper v. Gordon, 201 Ark. 841, 147 S.W.2d 24 (1941).

It is therefore my opinion, although the language of the statute is not express on this point, that the answer to your question is "yes," A.C.A. § 24-11-826 applies to part-paid firefighters.

The foregoing opinion, which I hereby approve, was prepared  
by Deputy Attorney General Elana C. Wills.

Sincerely,



WINSTON BRYANT  
Attorney General

WB:cyh

Enclosure